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**Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General**

# Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*

## Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia in 2017

In the present report, the High Commissioner highlights some of the activities conducted by the Office of the High Commissioner (OHCHR) in the country, and assesses the first year of implementation of the human rights aspects of the peace agreement, stressing the specific challenges posed in rural areas, such as insecurity, violence linked to illegal economic activities in the context of disputes between illegal armed groups and organized crime, particularly in the areas of influence of the former Revolutionary Armed Forces of Colombia – People's Army.

The High Commissioner also highlights the increasing number of attacks on human rights defenders, the impact of corruption on disparities in the enjoyment of economic, social and cultural rights, and the difficulties of addressing multi-dimensional, decades-old problems suffered by rural communities.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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# Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia**

## I. Introduction

1. The present report, submitted to the Human Rights Council pursuant to General Assembly resolution 48/141, covers the period from 1 January to 31 December 2017.

2. The peace agreement signed between the Government of Colombia and the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) assigned the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia with substantial responsibilities – in addition to those included in its agreement with the Government – without additional resources.

3. The parties requested OHCHR to include in its annual report to the Human Rights Council its findings on the human rights impact of the implementation of the peace agreement. While several organizations monitor the agreement from a quantitative or procedural perspective, such as the number of laws expedited and the number of activities undertaken, OHCHR monitors the impact of the agreement in terms of the effective enjoyment of human rights by the people living in the areas most affected by the conflict. Such monitoring was conducted through 1,850 field missions in 2017. While negative effects were visible in the first year, it should be borne in mind that positive transformations require more time, as resolving complex problems that have prevailed for decades is a complex process.

4. The peace agreement allowed the end of hostilities between the parties. OHCHR recognizes the efforts made by FARC-EP to comply with its commitments to the demobilization and reintegration process, and the work of thousands of State agents to implement the agreement. The agreement reiterates the pre-existing human rights obligations of the State. Its full implementation could greatly improve the situation of human rights in rural areas.

5. A high degree of resistance to the implementation of the peace agreement has been opposed by various sectors of society, including among political and economic actors, the legislative and judicial bodies, and civil servants. For example, during the referendum process, the advancement of LGBTI and women's rights within the agreement were used to leverage opposition to it, which has had a chilling impact on previous gains related to those rights.

6. OHCHR has observed that other armed groups, including the National Liberation Army (ELN), and criminal organizations have entered areas formerly under FARC-EP influence, often seeking to control illegal economic activities, negatively affecting the rights of civilians. The consolidation of armed groups and criminal organizations in these areas can substantially hamper the implementation of the peace agreement and undermine the potential human rights benefits of the peace process. Considering these movements, the window of opportunity for improvements in the situation of human rights is small.

7. OHCHR reaffirms its commitment to continue to work with the State and civil society to improve the situation of human rights in Colombia. Through its field presence in the areas most affected by the armed conflict, OHCHR contributes to positive human rights change by empowering rural communities, facilitating community-duty-bearer interaction, and building their capacity to respond to the rights of the community. The peace agreement is an additional tool of positive change, given that much of it is designed to benefit rural communities through economic and political inclusion. OHCHR also promotes the participation of victims and the realization of their rights, for which the agreement opens

** Circulated in the language of submission and Spanish only.

new possibilities and challenges. It also provides technical assistance and capacity-building to facilitate the investigation and sanction of human rights violations.

## II. Challenges in the implementation of the peace agreement with regard to guarantees of non-repetition

### A. Attacks on human rights defenders

8. Despite the efforts of the State to reduce attacks on human rights defenders, OHCHR is extremely concerned at the increase in killings of defenders, including social and community leaders. In 2017, OHCHR registered a total of 441 attacks, including 121 killings. Fatalities included 84 human rights defenders with leadership roles, 23 members of social and political movements, and 14 people killed during social protests. OHCHR also recorded 41 attempted killings, 213 threats, 61 violations of the rights to privacy and property (for example, unsolicited photos and information theft), four cases of forced disappearance, and the rape of a woman activist.

9. Fourteen of the murdered defenders were women, twice the percentage of women defenders killed in 2016. Three of the victims were from the LGBTI community. The categories of defenders most affected by attacks were community, indigenous, peasant, Afro-Colombian and union leaders.

10. The regions where the largest numbers of killings were committed were Antioquia (13) and Cauca (11). Sixty-two per cent of killings were in rural areas, 24 per cent in towns near the former conflict zone and 14 per cent in main cities.

11. The 64 per cent of killings were committed in areas most affected by the conflict[1] and where FARC-EP was historically present. The power vacuum that followed the demobilization of FARC-EP, the lack of an integrated State presence and delays in the implementation of the peace agreement allowed illegal and criminal groups to enter these areas and to take over the illegal economic activities that had not yet been transformed, leading to an increase in violence. Several of the victims were apparently killed because of their support for policies deriving from the agreement, such as the substitution of illicit crops and integral rural reform, reflecting a new trend in motives behind killings. In previous years, most human rights defenders were killed because of their opposition to government policies, not for their support of them.

12. Fifty-seven per cent of killings were apparently perpetrated by contract killers, a fact that renders identification of the intellectual author difficult. The alleged material authors of the killings were mainly members of criminal groups that potentially included former members or structures of paramilitary organizations (54 cases); illegal armed groups – ELN (four cases); ex-FARC-EP (three cases); the People's Liberation Army (EPL) (one case); individuals not affiliated to any criminal or illegal armed group (19 cases); and members of security forces (three cases).

13. Members of the police and military are being investigated for 14 killings committed during social protests. In October, in Tumaco, Nariño, seven protesters were killed in the context of protests against the forced eradication of illicit crops. Before the formal investigation, the police alleged having been attacked with improvised explosive devices; in situ, OHCHR could not confirm this allegation. OHCHR is strengthening the ongoing investigations into this incident. To date, two commanders have been charged.

14. Some of the killings of human rights defenders, especially in areas of former influence of FARC-EP, could arguably have been prevented by a timely and coordinated State response to implement the peace agreement, prioritizing the rights of the population. The weak State presence in these areas leads to a lack of access to rights and opportunities

[1] Municipalities designated *Zonas Más Afectadas por el Conflicto Armado* (ZOMAC) by decree No. 1650 of 2017.

for the communities to become part of the legal economy; it therefore exacerbates poverty and contributes to the development or maintenance of illegal economic activities, which in turn facilitate the formation and/or arrival of criminal organizations and illegal armed groups that fight for control, generating corruption and endemic levels of violence. In the last trimester of 2017, OHCHR registered four massacres in the context of disputes for the control of illegal economic activities in Nariño and Cauca, areas formerly controlled by FARC-EP.

15. The context of the vast majority of killings of human rights defenders shares three characteristics: the presence of illegal economic activities (for example, trafficking or production of narcotics, illicit crops, illegal mining, micro-trafficking, and extortion); a municipal homicide rate exceeding the levels of endemic violence, according to the criteria established by the World Health Organization (WHO);[2] and a multidimensional poverty rate higher than the national average.

16. OHCHR welcomes the decision of the Office of the Attorney General to prioritize its investigations of killings of human rights defenders, and notes the 15 sentences related to such crimes issued since 2015, including five in 2017. OHCHR also welcomes the strategy adopted by the Office of the Attorney General to intervene in 500 prioritized municipalities, and the adoption of directive No. 0002 of 2017, which establishes guidelines for the investigation of crimes against human rights defenders, based on a dialogue with the Inter-American Commission on Human Rights. OHCHR notes the support given by specialized prosecutors to regional prosecutors to improve capacity for urgent actions to investigate crimes against human rights defenders.

17. While significant progress has been made by the Office of the Attorney-General to identify the material author of the crimes, in most cases, the intellectual authors have not been identified. OHCHR considers that full criminal accountability for the attacks against human rights defenders is critical, as it would constitute a safeguard for protection and non-repetition.

18. Importantly, the Office of the Procurator General announced (in directive 002/2017) that it would use its administrative and disciplinary powers to address the stigmatization of human rights defenders, and the lack of action by municipal, departmental or national authorities to protect them.

19. While OHCHR acknowledges the efforts made by the National Protection Unit of the Ministry of the Interior to protect human rights defenders, it notes that four defenders were killed while under the Unit's protection in 2017 . The defenders, who had all been assigned a bodyguard, were killed when the bodyguards were not present, indicating that bodyguards do actually deter attacks. It also appears that budgetary cuts affecting the Unit have had a negative impact on protection schemes.

20. Strengthening the gender analysis in threats to human rights defenders is critical, as is an analysis of threats in rural settings, given the prevalence of killings in these areas.

21. OHCHR recommends the modification of protection measures in rural areas and the strengthening of collective protection measures, such as through indigenous and afro-Colombian guards, as means of individual and territorial protection. Protection measures have, however, their limits, given that human rights defenders will continue to run risks unless the structural factors of multidimensional poverty, illegal economic activities, power vacuums and lack of State presence are addressed.

22. OHCHR welcomes the creation of the elite corps of the national police, established under the peace agreement to combat criminal organizations, and of the special investigation unit of the Office of the Attorney General for dismantling criminal organizations, and the efforts made by both entities. The latter requires more financial and technical resources and political support to function properly. The Office of the Attorney

[2] WHO classifies regions with a homicide rate above 10 per 100,000 inhabitants as suffering from endemic violence.

General should investigate the links between corruption and organized crime, given that some defenders who have denounced this correlation have suffered attacks.

## B. Reintegration of former combatants and children

### 1. Reintegration of former combatants

23. According to a socioeconomic study on FARC-EP conducted in 2017 by the National University of Colombia, 66 per cent of the reintegrated population of FARC-EP are from rural areas. Some 30 per cent identify themselves as belonging to an ethnic group, and 23 per cent are women.

24. Serious challenges, such as the lack of clean water, sanitation and habitable housing, were observed in the transitional local zones for normalization, where combatants were concentrated to begin the demobilization process. This situation may have led some former FARC-EP members to abandon these locations. OHCHR observed cost overruns and delays in the construction of infrastructure in some of the zones. Given the centralization of contracts, the zones did not generate the expected positive economic impact on rural communities through local contracting, as envisioned in the peace agreement.

25. The reintegration of former combatants into rural areas is a major challenge owing to multidimensional poverty, problematic access to health and education, illegal economic activities and endemic violence in 96 per cent of the areas near the transitional zones. According to the study conducted by the National University (see para. 23 above), health is a major challenge in the reintegration process, given that 3,305 people (33 per cent) of those surveyed () had a disability that was due to the conflict.

26. OHCHR emphasizes the importance of accelerating the implementation of the reintegration programmes envisioned in the peace agreement, including from a gender and ethnic perspective, taking into account the specific conditions of individuals living in rural areas. Former combatants could be reintegrated into society if they accepted jobs and/or activities such as forest rangers, in logistic support for productivity, or providing basic health care. Successful reintegration is a key factor in preventing ex-combatants from engaging in illegal activities and persuading those who abandoned the reintegration process to return.

27. Illegal armed and criminal groups that have entered areas of former FARC-EP influence have generated violence in rural communities and constitute a potential threat to former FARC-EP members participating in the upcoming electoral processes. Certain sectors of society refuse to accept a demobilized FARC-EP, particularly in the political arena, which has delayed and complicated the implementation of the peace agreement, particularly with regard to their political participation. OHCHR received information regarding the killing of at least 36 former FARC-EP members in 2017. Worryingly, limited progress has been made in security guarantees for the political participation of FARC-EP, as stipulated in the agreement. The comprehensive protection programme for organizations and communities in rural areas that includes former FARC-EP members is not yet fully operational. Little significant progress has also been made in the structural changes necessary to limit the impact of criminal organizations on politics, such as transforming illegal economies.

28. The 160 members of the Security and Protection Corps created by the peace agreement are demobilized FARC-EP combatants and have begun to provide protection for the new FARC political party. While this reintegration programme is a concrete example of what is possible to achieve in reintegration, a larger number of demobilized FARC-EP members were meant to be integrated into it.

29. According to the Office of the Ombudsman, as at 25 October, some 800 former FARC-EP fighters (11 per cent of ex-combatants) had formed or joined other illegal armed or criminal groups.

### 2. Reintegration of children

30. The peace agreement and human rights law require respect for the principle of the best interests of the child within the process of their separation from FARC-EP. Nonetheless, this principle has not been respected in its totality.

31. According to the Office of the Presidential Adviser for Human Rights, as at 31 December 2017, only 135 children had been separated from FARC-EP (75 girls and 60 boys). OHCHR has received reports of the informal separation of children before the formal process in at least Cauca, Caqueta and Meta.

32. Children who have opted to rejoin their family, which is the preferred response, face inadequate access to health and education, challenges frequently encountered in rural Colombia. It is therefore necessary to ensure the full implementation of the peace agreement so that rights of children will be respected when they return to their families. Those who have remained in separation-reintegration facilities have had better access to health and education, but are often far from their families and communities.

33. In 2017, OHCHR received information through its field presences that children were still being recruited and used in areas where former FARC-EP members were operating. ELN and criminal groups also continued to recruite and use children.

## III. Rural challenge and other structural factors fffecting the situation of human rights

34. The problems endured by rural communities are interconnected and multidimensional, and addressing them is complex. The solution to one specific problem requires solutions to others; for example, OHCHR observed in several areas previously controlled by FARC-EP that, in order for local justice to function properly without threats from criminal groups, illicit crops must be substituted. The substitution of these crops, however, requires the clarification of land titles, which in turn necessitates the purchase and distribution of land. All these steps entail budgetary allocations, which require a political majority at the municipal, departmental and national levels to pass the budget. Given that the problem to be solved is different in each community, transformative nationwide goals motivate each actor to take action without considering the proper sequencing or the ability to make an impact on the situaiton of human rights. More realistic goals are required, with indicators that reflect the situation of human rights down to the level of township.

35. OHCHR observed, for example, the challenge posed by interconnected and multidimensional problems in rural communities in the regions of Norte de Santander, Nariño and Putumayo, where illicit crops were substituted with legal ones.These communities, however, expressed concern at the lack of effective assistance in bringing their new products to market. OHCHR has encouraged actions that could lead to market access for rural communities in Chocó, Norte de Santander, Antioquia and Tolima. The State, the international community and the private sector should encourage direct and fair economic relations between rural communities and consumers, to raise living standards and to prevent the return to an illegal economy.

36. The presence of the State and budgetary guarantees are paramount to advance the formalization of land ownership,[3] as prescribed in the the comprehensive rural reform described in the peace agreement, as are the creation of local markets, connectivity, technical assistance, loans and access to public services. State action is necessary to create a context where illicit crops can be substituted successfully. While the agreement envisages partnerships with rural communities in its implementation (for example, in the chanpter on ethnic issues), community members in many rural areas expressed their great frustration to OHCHR that their participation had been reduced to attending meetings, with no visible impact.

[3] The National Agency for Land (ANT) informed OHCHR that 3 billion pesos would be needed over the next 10 years to formalize all land currently registered as informal.

37. In this regard, OHCHR encourages the relevant State authorities to see the participation of indigenous peoples, afro-Colombians, peasants, women and persons with disabilities as a mechanism for effective empowerment that could end structural exclusion and discrimination, rather than as a mere formality.

## A. Impact on human rights caused by the lack of the presence of the State, illegal economic activities and their effect on the implementation of the peace agreement

38. The effective and integral presence of the State in rural areas is essential to guarantee security, justice and the empowerment of leaders and authorities, and to stimulate economic development. While plans have been made and laws passed to ensure a greater presence, the deployment of State services has barely been initiated.[4] The sole presence of State security forces seeking to impose the authority of the State by means of force has not helped to create positive and sustianable change in communities. The lack of an integrated approach by the State has rather led to an escalation of violence in certain parts of the country.

39. The violent groups taking advantage of the weak State presence in former areas of FARC-EP influence include national and transnational organized crime groups, numerous local crime groups, groups that emerged owing to the many challenges in the reintegration of FARC-EP members, and organized armed groups, such as ELN and EPL.

40. The fight for control of illegal economic activitees is reflected in the rising homicide rates in several of these regions, including the ones declared as areas most affected by the conflict.[2] For instance, in Mesetas (Meta), Magui Payán (Nariño) and El Carmen (Norte de Santander), the number of homicides registered by the national police in 2017 exceeded the number registered in 2016 by 1,095, 966 and 916 per cent, respectively. Those living in areas where illegal economic activities are conducted have faced different types of violence, which has led some civilians to seek the support of illegal groups as a means of protection.

41. A sustainable solution to the cultivation of illicit crops requires structural changes that enable farmers to be integrated fully into the legal economy in the long term. Provisions in the peace agreement relating to the substitution of illicit crops and rural reform provide a historic opportunity for tens of thousands of small and landless farmers who wish to substitute illicit crops. The State and the international community should support this historic opportunity, and not undermine it through forced eradication; more than 100,000 coca growers have in fact expressed their interest in substitution. While the State and donors have to date concentrated on the quantity of coca eradicated as the goal, criteria based on rights and the peace agreement and focused on crop substitution is required.

42. The forced eradication of illicit crops conducted by the Ministry of Defence in areas where voluntary substitution agreements have been signed, or were being considered, have triggered protests and clashes. OHCHR intervened in many cases to prevent an escalation of violence. The presence of illegal groups who have threatened, kidnapped and killed people supporting substitution (such as local activists, government workers and personnel of international organizations), coupled with the contradictory messaging created when communities interested in substitution have been subject to forced eradication, have pushed some communities into the sphere of influence of illegal armed groups and criminal organizations.

43. OHCHR undertook initiatives to empower local community governance structures, such as Juntas de Acción Comunal,[5] indigenous and afro-Colombian authorities, and to

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[4] *Plan Marco de Implementación : Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera* (available from www.equidadmujer.gov.co/oag/Documents/Plan-Marco-Implementacion-Acuerdo-Final-Paz.pdf), paras.14-23.

[5] Created under law No. 743/2002 to "promote [...] sustainable development through the exercise of

encourage women's participation in rural areas, to strengthen their capacity to claim their rights. OHCHR has also fostered closer relations between these entities and municipal, departmental and national authorities. Such empowerment is critical to support the establishment of an effective and integrated State presence in areas of former FARC-EP influence.

## B. Territory-based development programmes

44. Territory-based development programmes (PDET) are the main tool created by the peace agreement for the advancement of human rights in the rural areas most affected by the conflict. They should be implemented in a strategic, coordinated and timely manner, with a set of attainable goals. While there is a need for their implementation in all conflict-affected communities, OHCHR recommends that implementation be conducted in a gradual, focalized manner so that tangible changes are produced in one area before moving on to the next. This would not only build trust in the peace process, but also generate opportunities for interinstitutional learning of the sequential and simultaneous approaches necessary to the interrelated problems that communities face.

45. The resources announced by the Government in the framework of the rapid response strategy, designed to achieve an immediate impact in the areas of former FARC-EP influence, have not been allocated.The implementation process must therefore be accelerated, the strategy properly financed, and steps taken to ensure that such delays are not repeated while the development programmes are being implemented.

46. OHCHR notes that the likelihood of success for the development programmes is lower in areas with a high incidence of illegal economic activities and criminal groups. In areas where such risks are high, the intervention should be geographically focused (for example, at the township level) and include a human rights "do no harm" protocol.

## C. Governance and local justice

47. OHCHR notes that community action groups, responsible for conflict-resolution at the township level, have seen their influence and legitimacy diminish in many rural areas. FARC-EP often implemented the decisions of the groups, which have struggled to establish relations with national, departmental and municipal institutions owing to a lack of dedicated resources and to the delays in the capacity-building required for State institutions, such as the Office of the Attorney General, the Office of the Procurator General, the national police, and regional autonomous corporations[6] and municipalities, whichhas undermine the ability of the groups to coordinate with State authorities and to manage conflicts. It has even forced them to handle situations that go beyond their usual functions, such as cases of homicide or rape.

48. In areas where illegal economic activities are present, many members of community action groups are themselves involved in them. This affects their credibility, legitimacy and ability to interact with the police or prosecutors before illicit crops can be substituted;criminal groups or actors with private economic interests are thereby able to usurp local justice functions.

49. A similar situation has been observed within afro-Colombian councils and indigenous authorities, although for different reasons. While such authorities are recognized by the Constitution of Colombia, they are not yet recognized in practice. Some State actors are beginning to accept self-governance of these authorities over their territory. At the same time, high-level State officials have made public statements against the principle of prior,

participative democracy".

[6] Regional organs for environmental control, whose presence in rural areas is considered vital to prevent environmental degradation since the signing of the peace agreement.

free and informed consultation, as many still see self-government as an obstacle to the implementation of agro-industrial and mining projects rather than a means to improve the situation of human rights.

50. In the view of OHCHR, actions taken to strengthen local justice and self-governance systems are more effective and entail fewer risks for the communities and authorities in regions without illegal economic activities. In order to avoid doing harm and wasting resources, the Government and donors should be aware of the difficulties and dangers of working in areas characterized by the presence of illegal economic activities and criminal groups, and of the need to prioritize economic transformation in those areas.

## D. Economic, social and cultural rights

51. One of the main obstacles faced by a State when guaranteeing the realization of economic, social and cultural rights is the temptation to prioritize public spending in population centres to obtain votes over spending to ensure access and enjoyment of basic rights in less populated and deprived rural areas.

52. Serious challenges to equal access to the right to health persist in rural areas. For example, the situation observed in the municipality of Riosucio, Chocó – an area formerly under FARC-EP influence – indicates that, despite material improvements in the health centre of the urban area, challenges persist in rural areas, namely lack of drinking water and sewage systems, absence of health centres and health professionals. Moreover, children are sometimes deprived of health care because they do not have a birth certificate. Between January and August, six children died owing to preventable and treatable causes in this area, such as diarrhea and respiratory infections.

53. The lack of basic health care and of a culturally pertinent public health policy affects indigenous peoples at risk of extinction in Amazonas, Putumayo and Caquetá. There is a similar lack of access to health care in small and landless farmer communities in various parts of the country formerly under FARC-EP influence.

54. The infant mortality rate among the indigenous population (20.9 per every 1,000 children born alive) is five points higher than among the non-indigenous population (15.9). The maternal mortality rate of afro-Colombian women is 152.9, while it is 66.5 for the rest of the population.[7]

55. The rights to water, health and food are also negatively affected by both legal and illegal mining activities, which pollute rivers in various parts of the country, and particularly in areas affected by the armed conflict, such as the rivers Caquetá and Putumayo (affecting indigenous communities); the Nechí, in Antioquia; the Cauca; and the Quito and Atrato, in Chocó.

56. OHCHR supports two initiatives to restructure illegal mining activities into legal and environmentally sustainable ones: in El Bagre, Antioquia, and in the basins of the rivers Beberá and Bebaramá, in Chocó. In the latter area, the Ministry of the Environment, local and ethnic communities, the international community and the United Nations Industrial Development Organization are involved in a process aimed at improving living conditions in mining communities, deterring the presence of criminal groups and minimizing the environmental impact of gold mining.

57. OHCHR observed how the lack of continuity in the contracting of teachers, and the precariousness of school facilities and pedagogical material, contribute to dropout rates and hinder access to quality education, in rural areas affected by the conflict in Antioquia, Amazonas, Bolívar, Huila, Putumayo, Nariño, Choco, Arauca, Caquetá, Meta and Tolima.

58. The lack of a commitment to measurably improve the degree of enjoyment of rights by communities was observed among some civil servants – even high-ranking ones – who prioritized their personal and career interests over the rights of the population. It is therefore

[7] See CEPAL, *Panorama Social de América Latina* 2016, pp. 162 and 254.

necessary to create indicators at the township level that identify the problems of access to economic, social and cultural rights, given that current statistics at the municipal and department levels do not detect these violations.

## E. Corruption and human rights

59. Corruption deprives many communities of social investments and undermines the efforts by the State to guarantee all human rights. Significantly, the Committee on Economic, Social and Cultural Rights, in its concluding observations on the sixth periodic report of Colombia (E/C.12/COL/CO/6), recommended that the Government address the causes of corruption.

60. The Office of the General Comptroller estimates that the cost of corruption amounts to approximately $17 billion per year. The Office of the Attorney General estimates the cost at 4 per cent of gross domestic product (GDP).[8]

61. In its replies to the list of issues in relation to its sixth periodic report submitted to the Committee on Economic, Social and Cultural Rights (E/C.12/COL/Q/6/Add.1), the Government of Colombia pointed out that, between 2012 and 2016, the Office of the Attorney General had received 64,095 complaints of corruption. OHCHR notes that only 1.6 per cent of the cases were resolved, demonstrating a significant degree of historic impunity.

62. In the framework of its new anti-corruption plan for the period 2016-2020, the Attorney General announced that more than 500 civil servants were being investigated, involving approximately $686 million.[9] Of particular concern is the case of the former Directing Prosecutor on Corruption, who was arrested for allegely requesting bribes from the former Governor of Córdoba. In 2017, the efforts of the Office of the Attorney General resulted in a spike in public complaints on corruption.

63. OHCHR recommends that indicators to measure the impact of corruption on access to economic, social and cultural rights be created. The resources recovered from corruption should be used to strengthen access to such rights, particularly in the communities most affected by the conflict.

64. OHCHR is concerned by the events in Mocoa, Putumayo, in March 2017, where a mudslide caused 328 deaths and 103 disappearances, and affected 5,883 residents. The most recent territorial zoning plan had designated this particular area an "urban expansion zone", which allegedly permitted the purchase of land for construction purposes, despite the objections of the environmental authority in the light of previous warnings and incidents. This case demonstrates how corruption can have an impact on the right to life.

65. OHCHR obtained information on acts of corruption (linked to fuel smuggling) allegedly perpetrated by members of the military in Norte de Santander. According to the oil company Ecopetrol, 1,800 barrels were stolen in the first nine months of 2017. There are numerous allegations of members of the armed forces facilitating the transport of material to produce cocaine and machinery for illegal mining. Corruption in the armed forces can empower economically criminal groups and other armed groups. The high degree of impunity witnessed in cases of corruption have encouraged the continuation of such practices within the armed forces. It is for these reasons that the provisions of the peace agreement aimed at strengthening measures against corruption should be implemented as soon as possible.

66. OHCHR draws attention to an investigation conducted by the Office of the Attorney General into alleged asset laundering by national and transnational criminal organizations allegedly involving municipal officials in Pitalito, Huila, and a renowned local

[8] As a comparison, the World Bank estimates that Colombia spends roughly 5 per cent of its GDP on health.

[9] Fiscalía General de la Nación, "Casos de corrupción detectados e investigados por la Fiscalía ya ascienden a 2 billones de pesos", 1 September 2017.

businessman. The investigation linked the alleged perpetrators to the killing of at least two human rights defenders who were investigating cases of corruption, in 2015 and 2017.

## F. Land

67. OHCHR has observed that the process of land restitution has been seriously hampered in areas of interests for agro-industrial, mining and energy companies. It welcomes the decision of the Constitutional Court[10] in which it expressed its concern at the fact that thousands of case files relating to land conflicts (including 6,000 in Cordoba alone) had been "lost" before a transfer from one State entity to others.

68. Illicit economic activities generate criminal activities, which engender security risks for people claiming land restitution and for State agents working on it, as observed by OHCHR in Atrato River Basin/ Urabá and in La Dorada, Caldas.

## G. Participation

### 1. Political participation

69. While most urban voters have ready access to polling stations, people in rural areas face daunting challenges in exercising their right to vote. Lack of infrastructure in rural areas requires rural inhabitants to travel from several hours to days to vote, at considerable cost – factors thatundermine voter participation and hinders political inclusion. Equal access should be guaranteed for rural voters, especially in view of the presidential and legislative elections to be held in 2018.

70. Equal access is important also to prevent pressure on voters, given that candidates and parties backed by different economic sectors – including illicit ones – often offer to transport voters to polling stations, thus influencing the voting.

71. OHCHR notes with concern the grave obstacles to the implementation of the provisions contained in the chapter of the peace agreement on political participation in the form of attacks from political sectors with an interest in maintaining the political status quo or that have some other reason to oppose the agreement. It is particularly alarming that Congress did not approve the special constituencies for eace envisaged in the agreement as a means to boost the political participation of those living in former conflict-affected areas.

### 2. Social dialogue

72. In 2017, a number of protests were held, including in Buenaventura, Valle, Norte de Santander, Cauca and Chocó; indigenous protests were also held nationwide. Shortfalls in the guarantee of rights, citizens' perception of institutional incapacity, lack of democratic representation, and corruption were among the reasons for the protests.

73. OHCHR intervened in several protests to facilitate dialogue among the parties, to ease tensions and to support the implementation of the rights-enhancing agreements reached. It notes the positive role played by the Minister of the Interior, the Minister for the Environment and the Procurator General in these difficult processes.

74. Social protests were common in Colombia in 2017, resulting in 14 deaths and numerous injuries. The guarantees for mobilization and social protests stipulated in the peace agreement should therefore be implemented promptly, and steps taken to ensure the conformity of national protocols on the use of force in social protests with international standards.

75. OHCHR recognizes the efforts of the Government and protesters to find solutions based on respect for human rights. Notwithstanding, binding mechanisms, such as disciplinary control by the Procurator General and effective monitoring of implementation

[10] Constitutional Court, judicial decree No. 540 of 2017.

of obligations, are necessary if protests, motivated by a failure to respect agreements – as observed in Chocó, Buenaventura and Cauca – are to be avoided in the future.

## IV. Security of citizens in a context of peace

76. National, regional and international human rights law stipulates that military forces are not responsible for public safety and law enforcement, for fighting organized crime or for fostering social harmony and development. Exceptionally, the police may request military support, on the condition that it is provided under the principle of the primacy of the police, and with strict civilian oversight. The tasks of promoting social harmony and development are the exclusive responsibility of civilian authorities.

77. OHCHR is concerned at plans envisaged in directive No. 15 (2016) of the Ministry of Defence that justify the active participation of the military in tasks relevant to public safety, and other guidelines issued for the application of international humanitarian law instead of international human rights law to respond to organized criminal groups.

78. OHCHR documented 11 cases of alleged extrajudicial executions in 2017, in Arauca, Bolívar, Cesar, Córdoba, Norte de Santander, Tolima and Cundinamarca. Eight executions were allegedly carried out by members of the military and three by the police. OHCHR notes with great concern that, for the second consecutive year, alleged extrajudicial executions by the military were reported in Bolívar, Cesar and Norte de Santander.

79. Five extrajudicial executions were allegedly carried out during public safety operations conducted by the military, a clear demonstration of the risks of involving military forces in police operations. Three other extrajudicial executions were allegedly carried out during military operations against ELN. Three cases were related to the possible excessive use of force during routine police procedures.

80. Factors that might have contributed to alleged extrajudicial executions include the absence of command and control by police and military commanders, lack of operational planning, and the absence of tactical discipline.

81. The State should strengthen the operative capacity of civilian institutions in rural areas so that the military is not required to perform tasks outside its responsibilities. Some politicians have called for the military to be involved because it is one of the few State institutions operational in former areas of conflict; military training and discipline are not, however, suitable in such situations, and would lead to distortions in relation to other State authorities, particularly local authorities and the police, generating dependence and, in some cases, the subordination of civilian authority to military power. Situations of this type have been observed in Bolívar, Huila, Meta, Cundinamarca, Tolima, Antioquia, Caquetá, Cauca, Valle del Cauca, Putumayo, Amazonas, Norte de Santander, Arauca and Chocó.

82. The instrument for the prevention and monitoring of criminal organizations, envisaged by the peace agreement, has not been fully implemented. The first step towards its implementation was taken, however, in December 2017, in the form of decree No. 2124 of the Ministry of Interior, which laid down provisions for a new alert and prevention system for rapid intervention in the event of activities by criminal organizations.

83. Through its monitoring work in rural Colombia, OHCHR has witnessed the need for the national police to be allocated the resources necessary for it to assume fully its duties and functions in the implementation of the peace agreement. OHCHR calls upon the Government to make the necessary adjustments to its budget.

84. OHCHR has found that the State still does not have valid statistics on the extent of sexual violence (despite the existence of an integrated information system on gender-based violence(, and that the protocols for intervention are usually not respected in rural areas, even when victims wish to make a complaint to the police and prosecutor.

# V. Transitional justice and the response to the rights of victims

## A. Progress of and challenges to transitional justice mechanisms derived from the peace agreement

85. The peace agreement called for the creation of a comprehensive system for truth, justice, reparation and non-repetition. Congress has not, however, implemented the system as originally envisaged; implementation to date therefore does not conform to international standards.

86. The system comprises a judicial mechanism, the special jurisdiction for peace, and two extrajudicial ones, the Commission on Truth, Coexistence and Non-repetition and the Special Unit for the Search for Persons deemed as Missing. These entities were designed to address grave violations of human rights and international humanitarian law committed during the armed conflict.

87. Pursuant to the request made in the peace agreement, OHCHR has supported the operation of the comprehensive system, in particular by providing logistical and technical assistance to the territorial liaisons of the executive secretariat of the special jurisdiction for peace, the only component of the system operational in 2017.

88. It is expected that the comprehensive system will encounter operating challenges in many areas of former FARC-EP influence owing to the human rights violations that continue in them.

89. OHCHR is deeply concerned to observe that the expectations raised by the comprehensive system to reduce impunity for violations of human rights and international humanitarian law have been undermined by the exclusion of non-military State agents and private individuals from the scope of mandatory application of the system. Moreover, despite the efforts made by OHCHR (see A/HRC/34/3/Add.3), the definition of penal responsibility of military superiors in Legislative Act 1 of 2017 and in the statutory law of the special jurisdiction for peacedoes not comply with international standards, a fact that the Prosecutor of the International Criminal Court warned "could frustrate the efforts of Colombia to observe its duty to investigate and sanction international crimes".[11] The regulation makes it virtually impossible to prove responsibility by omission of military commanders. This seriously affecting the capacity of the special jurisdiction for peace to guarantee accountability of those bearing most responsibility.

90. Despite the adequate conceptualization of international standards and the important work done by the selection committee of the comprehensive system, OHCHR is deeply concerned at the decision of Congress to prohibit the appointment of some of the selected judges owing to their involvement in litigation against the State in cases of alleged human rights violations. The decision contradicts international and national standards relative to the independence of the judiciary, as well as the peace agreement with regard to the profiles and competencies required judges to be appointed to the special jurisdiction for peace. It also risks exacerbating the stigmatization of human rights defenders in a context where the incidence of killing of defenders has been rising.

91. OHCHR is also concerned at the decision by Congress to grant amnesties, pardons and other measures of commutation for FARC-EP members and members of the Colombian military convicted or charged with human rights-related crimes that, under international law, are not subject to amnesty. Such individuals have often been granted conditional liberty with few conditions with regard to, for example, justice, truth, reparations and guarantees of non-repetition, thereby undermining the legitimacy of the comprehensive system. As applied in these cases, the amnesty law may result in benefits being available to perpetrators rather than the intended alternative or non-retributive

[11] Escrito de Amicus Curiae de la Fiscal de la Corte Penal Internacional sobre la Jurisdicción Escpecial para la Paz, 18 October 2017, para. 53.

treatment envisaged by the comprehensive system under the peace agreement. As at 24 November, the Executive Secretariat of the special jurisdiction for peace reported the release from prison of 2,381 former FARC-EP members and of 1,011 members of the military. No information was provided with regard to the whereabouts of those released or to whether they would assist with, for example, efforts towards truth and reparations.

92. OHCHR notes with concern that, of the 36 former FARC-EP members killed in 2017, 11 had been amnestied and released from prison without a re-entry or reintegration programme. OHCHR has advocated that those leaving prison through an amnesty or conditional release should participate in a re-entry or reintegration programme that would include social work value and contributions to reparation and reconciliation efforts, which would also contribute to their security.

93. OHCHR notes a lack of consistency in the application of the amnesty law by the judiciary, resulting in similar cases receiving different treatment: for example, former FARC-EP members facing the same charges have been released, while others remain in prison.

94. OHCHR reiterates that the Commission on Truth, Coexistence and Non-repetition is the legitimate body mandated by the peace agreement to seek the truth about past violations and abuses; the truth commission established by the Active Reserve of the Armed Forces and National Police lacks objectivity, given that its members were active parties to the conflict. The latter commission indeed seems to have been established to undermine the work of the former.

95. The search for disappeared persons is a significant obligation of the State to victims. In the light of the humanitarian role of the Special Unit for the Search for Persons deemed as Missing, OHCHR calls upon the Office of the Attorney General, the National Institute of Forensic Medicine and Sciences and other stakeholders to collaborate with the Unit in the search for, localization, exhumation, identification and dignified delivery of remains. The process should include the active participation of victims.

96. OHCHR urges the State to ensure the financial and operational sustainability of all the mechanisms of the comprehensive system, noting that in 2017, such efforts were largely funded by the international community.

## B. Extrajudicial executions in previous years

97. OHCHR is concerned at the selective impunity in cases of extrajudicial executions carried out by members of the armed forces involving generals, which compromises the rights of victims to justice and truth. It received information regarding alleged threats to victims, witnesses and judicial officials involved in litigation concerning extrajudicial executions. The persons affected have not made formal complaints, which would suggest a lack of trust in the authorities.

98. The Council of State, in its decision of 5 December 2017, established that extrajudicial executions ("false positives") were a generalized and systematic practice.[12] OHCHR has noted that high-ranking officers in the chain of command, including some of those under investigation for numerous "false positive" cases, had been promoted in the past two years rather than being subjected to a vetting process to ensure that those involved or who failed to take action to stop these heinous crimes are at the very least removed from active duty. In addition, the funds obtained down the chain of command as bonuses for killings in combat that were in fact extrajudicial executions should be reimbursed and used for reparations to victims.

[12] Case number 73001-23-31-000-2008-00561-01 (38.058).

# VI. Recommendations

99. **The United Nations High Commissioner for Human Rights reiterates the recommendations made in his previous reports, and makes the recommendations below.**

## A. Change indicators to monitor the effective enjoyment of human rights

100. **The High Commissioner**

(a) **Calls for the creation of a system, including at the township level, to measure the impact of the peace agreement on the effective enjoyment of human rights;**

(b) **Urges the offices of the Attorney General, the Comptroller General and the Procurator General to continue their efforts to prevent, prosecute and punish cases of corruption of civil servants and political representatives, and to measure how that work contributes to improvements in the progressive realization of economic, social and cultural rights;**

(c) **Calls upon the Office of the Ombudsman to include lack of access to economic, social and cultural rights, and corruption, in its early warning/risk reports;**

(d) **Urges the State to make effective use of the comprehensive information system on gender-based violence;**

(e) **Urges the international community to establish efficient control mechanisms to ensure that the resources allocated for the implementation of the peace agreement generate measurable effects that favour greater enjoyment of rights in rural communities most affected by the conflict.**

## B. Transformation and empowerment of small and landless farmers, indigenous and Afro-Colombian communities

101. **The High Commissioner also:**

(a) **Urges the State to secure integral and effective institutional presence in rural areas, particularly those formerly under FARC-EP influence, with the objective to consolidate the recognition and strengthening of and support for the legitimacy of the work of community action groups, Afro-Colombian councils and indigenous authorities;**

(b) **Urges the State and the international community to prioritize structural changes in rural areas, particularly where the conflict had the greatest impact, and to empower local administration and justice institutions (for example, transitional, ordinary and indigenous jurisdictions);**

(c) **Recommends that the State set realistic goals for the implementation of the peace agreement in rural areas, and include a risk analysis that takes into account the presence of illegal economic activities and the risks to which communities and implementers might be subject;**

(d) **Recommends that the State prioritze public purchases of locally produced products from the rural areas most affected by the conflict as a way to address historic poverty and exclusion, aiming at 30 per cent of all public purchases by 2020;**

(e) **Encourages the State to develop a system that allows for more civil servants at all levels to gain experience working in rural areas, in order for them to understand the challenges facing each region and apply differentiated approaches, including from perspective of gender and ethnic considerations.**

## C. Positive impact on human rights through the implementation of the peace agreement with FARC-EP and in the framework of negotiations with ELN

102. **The High Commissioner further:**

(a) **Urges the Office of the Procurator General to investigate delays in the implementation of the peace agreement, and to adopt adequate administrative and disciplinary measures according; the parties should nonetheless consider orienting implementation of the agreement in a gradual, differential and focalized manner in order to generate tangible changes in a realistic number of communities as a first step, rather than aiming at a one-time nationwide implementation strategy;**

(b) **Recommends an increase in public spending in areas where children have been informally separatedfrom FARC-EP, so that they may have access to education and to psychosocial and development support, applying the principle of the best interests of the child while taking into account gender and ethnic considerations;**

(c) **Urges the State to implement in a timely manner all aspects relating to the reintegration of former FARC-EP members, as envisaged in the peace agreement, including a gender-sensitive approach, in order to promote their full social, economic and political inclusion, with the necessary security guarantees;**

(d) **Urges the Elite Corps of the Police to coordinate with the entities that are part of the National Commission on Security Guarantees (for example, the Office of the Attorney General) to provide a comprehensive response in prevention, protection and investigations relating to security concerns in areas of former FARC-EP influence;**

(e) **Calls upon the State to amend aspects of the comprehensive transitional justice system that are not in conformity with international standards, to secure funding for the mechanisms created, and to allow for the effective participation of victims;**

(f) **Calls upon all persons working in the comprehensive transitional justice system always to act in accordance with the State's human rights obligations;**

(g) **Encourages the Government of Colombia and ELN to strengthen their respect for human rights and international humanitarian law, and thereby build confidence in the peace process;**

(h) **Recommends that the Government and ELN reach an agreement based on a human rights approach that would allow for timely structural transformations in rural territories where ELN is present, to avoid the creation of power vacuums;**

(i) **Recalls that the use of force by the State, particularly in situations of social protests, should adhere to the principles of international human rights law, as required by the peace agreement; the use of lethal force should be subject to strict conditions, in accordance with relevant international standards, and transparent accountability.**